IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FOURTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 13455 of 2004

Between:

1 Mohammed Khaja, S/o Mohammed Shaik Nizami,
Dabeerpura, Hyderabad.
2 Syed Khaleeluddin, S/o Ahmed Ali,
R/o 17-3-243, SRT Colony, Yakutpura, Hyderabad.

....PETITIONERS

AND

1 The Commissioner, Municipal Corporation of Hyderabad,
Office at Tank Bund, Hyderabad.
2 The Assistant City Planner, Circle No.1, T.P. Section, M.C.H. Sardar Mahal, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the proposed action of the respondents No.1 and 2 intending to demolish the property Municipal Nos. 17-6-264 & 17-6-364, situated at Dabeerpura, Hyderabad for road widening programme without following due process of law as highly illegal and arbitrary and contrary to sections 146 and 147 of the H.M.C. Act, 1955.

Counsel for the Petitioner: MR.ABDUL NAJEEB KHAN

Counsel for the Respondents: MR.RAMA RAO GANTA, Standing Counsel for M.C.H.

The Court made the following :

THE HONOURABLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.13455 OF 2004

ORDER:

The petitioners claim to be owners and possessors of the immovable property; two mulgies bearing Nos.17-6-264 and 17-6-364 situated at Dabeerpura, Hyderabad. It is their grievance that so as to widen the road in front of the mulgies, the respondents 1 and 2 came to the property and threatened to demolish the structures without due process of law. Indeed, the Municipal Corporation of Hyderabad issued a notice/letter dated 24.06.2002 calling upon the predecessor in title to give her consent for taking the land in her possession for the purpose of road widening, which was duly replied by the petitioners by issuing a legal notice. Alleging highhanded action and complaining about threatened demolition, the present writ petition is filed.

When the matter was listed on 02.08.2004, this Court directed the learned Standing Counsel to get instructions in the matter and also to file counter affidavit. Today, a counter affidavit is also filed and petitioners also filed reply affidavit. In the counter affidavit filed by the Assistant City Planner, the second respondent herein, the allegation that respondents 1 and 2 tried to threaten to demolish the structures is categorically denied. The respondent avers that he never attempted to demolish the property without due process of law. It is further stated that as the Corporation could not get the consent of the petitioners for surrender of the land, it was decided to initiate necessary action under Land Acquisition Act, 1894 by sending requisition to the Land Acquisition Officer. It is also stated that the Government is disputing the title of the petitioners and the land allegedly belongs to the Government.

In reply affidavit filed today by the first petitioner, it is stated that two mulgies form part of composite double storied building, that the Corporation has paid amount by way of cheques to the owner of the first floor and that initially the Corporation has tried to take the land by mutual consent. The petitioners also argued that the two mulgies are private property and are not the Government property.

The writ petition is filed seeking declaration that the action of the respondents in proposing to demolish the property is illegal and contrary to provisions of Section

146 and 147 of the Hyderabad Municipal Corporation Act. The respondents have filed counter affidavit categorically stating that they never attempted to demolish the structures without due process of law. The same is recorded and the Corporation is directed to proceed in accordance with law.

The writ petition, with the above observations, is disposed of.

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(V.V.S.RAO,J)

04.08.2004.

pln

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Commissioner, Municipal Corporation of Hyderabad, Office at Tank Bund, Hyderabad.
2. The Assistant City Planner, Circle No.1, T.P.Section, M.C.H.Sardar Mahal, Hyderabad.
3. 2 CD copies.